Corrected copy – see pgs. 7 & 24

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Debra Deletetsky

v. : **A.A. No. 13 - 153**

Department of Labor and Training, Board of Review

O R D E R

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings & Recommendations of the Magistrate.

After a de novo review of the record and the memoranda of counsel, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto. It is, therefore, ORDERED, ADJUDGED AND DECREED,

that the Findings & Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the decision of the Board of Review is AFFIRMED

Entered as an Order of this Court on this 12th day of August, 2014.

By Order:

/s/
Stephen C. Waluk
Chief Clerk

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Debra B. Deletetsky	:	
	:	
v.	:	**A.A. No. 13 – 153**
	:	
Department of Labor and Training,	:	
Board of Review	:	

F I N D I N G S & R E C O M M E N D A T I O N S

Ippolito, M. Ms. Debra E. Deletetsky filed the instant complaint for judicial review of a final decision of the Board of Review of the Department of Labor and Training, which held that she was not entitled to receive employment security benefits based upon proved misconduct. Jurisdiction for appeals from the decision of the Department of Employment and Training Board of Review is vested in the District Court by Gen. Laws 1956 § 28-44-52. This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. Employing the

standard of review applicable to administrative appeals, I find that the decision of the Board of Review is supported by substantial evidence of record and was not affected by error of law; accordingly, I recommend that it be affirmed.

I

FACTS AND TRAVEL OF THE CASE

The facts and travel of the case are these: Ms. Debra B. Deletetsky — a certified general education teacher for grades K through 4 — was employed by the West Warwick School Department for one week as a substitute teacher in a kindergarten classroom. On her last day of work an incident occurred that led to her dismissal. The claimant was asked to participate in an Individualized Education Plan (IEP) meeting by the school's principal. Claimant had misgivings, since she did not know the child. She went to the meeting, but was excused when she refused to sign her name on the attendance sheet. Her name was removed from the substitute list for insubordination.

She re-opened a claim for unemployment benefits on April 24, 2013. However, on May 28, 2013, the Director of the Department of Labor and Training decided that she was disqualified from receiving benefits due to

misconduct as provided in Gen. Laws 1956 § 28-44-18. See Director's Exhibit No. 2.

Ms. Deletetsky appealed and a hearing was held before Referee Carol Gibson on July 2, 2013, at which the Claimant and an employer representative appeared and testified. In her July 9, 2013 Decision, Referee Gibson found the following facts regarding the Claimant's termination:

> **2. Findings Of Fact:**
>
> The claimant had worked for the employer, a school department, for one week as a substitute teacher through April 4, 2013. On the last day of work, the claimant was working as a substitute teacher in a kindergarten classroom. The claimant is certified as a general education substitute teacher for kindergarten through fourth grade. The school principal made a request that the claimant participate in an Individualized Education Plan (IEP) meeting for a student. The claimant states she did not have knowledge of the student and she had never participated in an IEP meeting. The employer who testified at the hearing did not have first-hand testimony as to the incident which occurred on the last day of work. The employer states the claimant was only requested to be part of the meeting in the capacity of a general education teacher. The claimant was not required to have knowledge of the student. The claimant acknowledges refusing to be part of the IEP meeting. The claimant informed the principal that she would not be part of the meeting in front of a parent. The claimant indicates she was concerned because she was being asked to sign a document in the meeting. The claimant did not read the document to determine what she was being asked to sign. The letter from the employer, which is part of the record, indicates the claimant refused to sign in as a participant for the meeting. The employer removed the claimant from the substitute list following this

incident as they determined her actions were insubordination.

Decision of Referee, July 9, 2013 at 1. Based on these findings, the Referee —after quoting from the statute, (Gen. Laws 1956 § 28-44-18, which bars those who commit misconduct from receiving unemployment benefits and the leading Rhode Island Supreme Court case interpreting that statute, Turner v. Department of Employment and Training, Board of Review, 479 A.2d 740, 741-42 (R.I. 1984) — pronounced the following conclusions:

> **3. Conclusion:**
> * * *
> In all cases of discharge the employer bears the burden to prove by a preponderance of credible testimony or evidence that the claimant committed an act or acts of misconduct as defined by the Law in connection with his work. It must be found and determined that the employer has met their burden.
>
> The weight and testimony presented establishes that the claimant was terminated for insubordination, in specific, refusing to accept the authority of the individual, in this case, the principal. The claimant refused to cooperate with a reasonable management directive that she participate in an IEP meeting. The claimant was not expected to have knowledge of the student and was only to serve in the educational capacity for which she was certified. The claimant's actions, refusal to comply with the request of the principal, constitute misconduct under the above section of the Act. Therefore, I find and determine that the claimant was discharged under disqualifying circumstances and benefits must be denied on this issue.

Decision of Referee, July 9, 2013 at 2. Accordingly, the Referee found Claimant was disqualified from receiving benefits pursuant to Gen. Laws

1956 § 28-44-18. Id., at 3.

Thereafter, a timely appeal was filed by Ms. Deletetsky and the matter was reviewed by the Board of Review. In a decision dated August 29, 2013, a majority of the members of the Board of Review held that the decision of the Referee was a proper adjudication of the facts and the law applicable thereto. Accordingly, the Board determined that claimant was disqualified from receiving unemployment benefits; the Decision of the Referee was thereby affirmed.

Ms. Deletetsky filed an appeal within the Sixth Division District Court on September 17, 2013. On November 13, 2013, the undersigned conducted a conference at which a briefing schedule was set. Helpful memoranda have been received from Claimant and the Employer.

II
APPLICABLE LAW

This case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically touches on disqualifying circumstances; Gen. Laws 1956 § 28-44-18, provides:

> **28-44-18. Discharge for misconduct. —** An individual who has been discharged for proved misconduct connected with his or her work shall become ineligible for waiting period credit or

> benefits for the week in which that discharge occurred and until he or she establishes to the satisfaction of the director that he or she has, subsequent to that discharge, had at least eight (8) weeks of work, and in each of that eight (8) weeks has had earnings of at least twenty (20) times the minimum hourly wage as defined in chapter 12 of this title for performing services in employment for one or more employers subject to chapters 42 – 44 of this title. Any individual who is required to leave his or her work pursuant to a plan, system, or program, public or private, providing for retirement, and who is otherwise eligible, shall under no circumstances be deemed to have been discharged for misconduct. If an individual is discharged and a complaint is issued by the regional office of the National Labor Relations board or the state labor relations board that an unfair labor practice has occurred in relation to the discharge, the individual shall be entitled to benefits if otherwise eligible. For the purposes of this section, "misconduct" is defined as deliberate conduct in willful disregard of the employer's interest, or a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence. Notwithstanding any other provisions of chapters 42 – 44 of this title, this section shall be construed in a manner that is fair and reasonable to both the employer and the employed worker.

In the case of Turner v. Department of Employment and Training, Board of Review, 479 A.2d 740, 741-42 (R.I. 1984), the Rhode Island Supreme Court adopted a definition of the term, "misconduct," in which they quoted from Boynton Cab Co. v. Newbeck, 237 Wis. 249, 259-60, 296 N.W. 636, 640 (1941):

> 'Misconduct' * * * is limited to conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which

> the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the statute.

The employer bears the burden of proving through a preponderance of evidence that the claimant's action, in connection with his work activities, constitutes misconduct as defined by law.

The particular ground of misconduct alleged in the instant matter — insubordination — has been held to constitute misconduct justifying disqualification from the receipt of benefits in many District Court cases. This has also been the predominant view nationally. ANNOT., Employee's insubordination as barring, 26 A.L.R.3d 637 (1969) and 76 Am. Jur. 2d Unemployment Compensation § 75.

III

STANDARD OF REVIEW

The standard of review is provided by Gen. Laws 1956 § 42-35-15(g), a section of the state Administrative Procedures Act, which provides as follows:

42-35-15. Judicial review of contested cases.

* * *

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the agency;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Thus, on questions of fact, the District Court "* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are 'clearly erroneous.' "[1] The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.[2] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[3]

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1 Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5).

2 Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213 (1968).

3 Id.

The Supreme Court of Rhode Island recognized in Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595, 597 (1964) that a liberal interpretation shall be utilized in construing and applying the Employment Security Act:

> * * * eligibility for benefits is to be determined in the light of the expressed legislative policy that "Chapters 42 to 44, inclusive, of this title shall be construed liberally in aid of their declared purpose which declared purpose is to lighten the burden which now falls upon the unemployed worker and his family." G.L. 1956, § 28-42-73. The legislature having thus declared a policy of liberal construction, this court, in construing the act, must seek to give as broad an effect to its humanitarian purpose as it reasonably may in the circumstances. Of course, compliance with the legislative policy does not warrant an extension of eligibility by this court to any person or class of persons not intended by the legislature to share in the benefits of the act; but neither does it permit this court to enlarge the exclusionary effect of expressed restrictions on eligibility under the guise of construing such provisions of the act.

IV
ISSUE

The issue before the Court is whether the decision of the Board of Review was supported by reliable, probative, and substantial evidence in the record or whether or not it was clearly erroneous or affected by error of law. More precisely, was Claimant disqualified from receiving unemployment benefits due to misconduct as provided by section 28-44-18?

V
ANALYSIS

A
Review of the Testimony

The employer endeavored to satisfy its burden of proving Ms. Deletetsky committed misconduct by presenting the testimony of Mr. Paul Vigeant, its Director of Special Education and Pupil and Personnel Services. Referee Hearing Transcript, at 11. He stated that he knew Claimant from interviewing her for a substitute position. Referee Hearing Transcript, at 11. He stated that, as of April 4, 2013, Claimant had been working for "a couple of weeks" as a substitute teacher in West Warwick's elementary schools. Referee Hearing Transcript, at 12.

He testified that on April 4, 2013 he received a call from Joan DeAngelis, Principal of the Greenbush Elementary School, indicating that Ms. Deletetsky refused to attend an IEP meeting. Referee Hearing Transcript, at 13. He indicated that, by law, there are four elements regarding the participation at an IEP meeting — (1) the Local Educational Authority (LEA); (2) one parent; (3) a general educator, and (4) one special educator. Referee Hearing Transcript, at 14-15. He also explained that the purpose of an IEP is to develop an individual program for a student who is determined

to have special needs or an annual review of such a program. Referee Hearing Transcript, at 15.

And Mr. Vigeant defined the role of a general educator at an IEP meeting to be speaking to the general education curriculum. Referee Hearing Transcript, at 16. Knowledge of the particular student's abilities is not necessary. Id. Mr. Vigeant explained that, as a result of the events of April 4, 2014, which he learned from Principal DeAngelis, and which he deemed to be insubordinate and a refusal to complete an essential function of her position — and for no other reason — Ms. Deletetsky was removed from the substitute list. Referee Hearing Transcript, at 18-21, 23.

Mr. Vigeant identified a letter regarding Ms. Deletetsky he had received from Principal DeAngelis. Referee Hearing Transcript, at 16-17. He stated that he had asked her to place her concerns in writing, and she did so. Referee Hearing Transcript, at 17.

Subsequently, about a week later, Ms. Deletetsky called to ask why she had not been called. Referee Hearing Transcript, at 17-18. When he explained that it related to the IEP meeting, Claimant said it was absurd that she should be asked to attend such a meeting. Referee Hearing Transcript, at

17, 22. But he disagreed, and indicated that attending such meetings was a "typical function of a substitute." Id.

At this point the Claimant was called to testify. Referee Hearing Transcript, at 24. She began by explaining that she has held a certification as a substitute teacher since the 1980's. Id. When she got to school that morning she found out she was substituting for two teachers, in a half-day kindergarten in the morning and a half-day first-grade in the afternoon. Referee Hearing Transcript, at 24. She had to solicit aid to find the kindergarten teacher's lesson plan. Referee Hearing Transcript, at 25. There was nothing on that plain regarding an IEP meeting. Referee Hearing Transcript, at 25. She stated that just before lunch another teacher came into the classroom. Referee Hearing Transcript, at 26. So, from the classroom telephone she called the office, and was told she was wanted there. Referee Hearing Transcript, at 26.

Claimant responded, and was led into an adjacent room where she found the school principal and a parent, to whom she was introduced. Referee Hearing Transcript, at 27. After Claimant was seated, she was informed she was there to sit-in on an IEP meeting. Id. Ms. Deletetsky told the principal that she had never sat in on such a meeting before. Id. The

principal then demanded that she sign a paper that had on it the student's name, a student with whom she had never had contact. Id. She denied that the paper was an attendance sheet. Referee Hearing Transcript, at 46. She asked the principal if she could go back to the kindergarten classroom. Referee Hearing Transcript, at 28. The principal then said no, she should not go back to the classroom, but to the lunchroom — which she did. Id.

Asked by her attorney why she would not attend the IEP meeting, Claimant said she did not know what it would lead to. Referee Hearing Transcript, at 29. (At this juncture she indicated she was disappointed that she had not been allowed to teach at the secondary level. Id.) She later added that she felt it would have made more sense for the other substitute to attend the meeting. Referee Hearing Transcript, at 37. While she denied she ever used the word "refused" with regard to the IEP meeting, Mrs. Deletetsky conceded (on cross-examination) she made it very clear at the meeting that she was not going to participate, even though she knew the meeting could not go forward without her. Referee Hearing Transcript, at 38, 47-48.

Returning to her narrative, she said that — after the incident — she spoke to another teacher, who told her a substitute had never attended an IEP meeting before. Referee Hearing Transcript, at 30. She ate her lunch and

then went outside for recess. Referee Hearing Transcript, at 31. While there, she was speaking with another teacher when the principal directed her to leave. Id. The principal would not tell her why. Referee Hearing Transcript, at 32. So, she returned to her classroom, copied the report she had written to the regular teacher, and left. Referee Hearing Transcript, at 32-35. She went to Human Resources to speak to Mr. Vigeant, but he was not there. Referee Hearing Transcript, at 33.

Ms. Deletetsky denied she was argumentative with the principal. Referee Hearing Transcript, at 36. She stated that the principal should have told her about the meeting first thing in the morning. Referee Hearing Transcript, at 39.

On cross-examination, she confirmed that she was experienced with special education. Referee Hearing Transcript, at 41. But she insisted that, when teaching a special education class, she would follow the lesson plans left by the regular teacher, without making reference to the students' individual lesson plans. Referee Hearing Transcript, at 42-43.

B

Discussion

The School Department of the Town of West Warwick terminated Ms. Deletetsky due to conduct it deemed to constitute insubordination —

refusing to participate in a meeting regarding a child. Of course, the Department's right to take this action is not at issue in this case. The only question is whether she must be disqualified from receiving unemployment benefits.

In her scholarly memorandum submitted to this Court, Ms. Deletetsky presents two defenses to the accusation of misconduct leveled against her — (1) the Referee relied on unreliable hearsay in making her finding of misconduct,[4] (2) the Employer failed to prove insubordination because, alternatively, there was no evidence she actually refused to participate in the IEP meeting[5] and any order to participate in the IEP was unreasonable as a matter of law.[6] Finally, she argues that, as a part-time worker (i.e., a substitute teacher), her discharge from the West Warwick School Department should have resulted in only her partial, but not total, disqualification from receiving unemployment benefits.[7] We shall now address these arguments in turn.

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4 Claimant's Memorandum of Law, at 6-8.

5 Claimant's Memorandum of Law, at 8-9.

6 Claimant's Memorandum of Law, at 9-16.

7 Claimant's Memorandum of Law, at 16-17.

1

The Referee's Decision (Adopted by the Board of Review) Did Not Improperly Rely on Unreliable Hearsay

In her memorandum Claimant argues that Referee Gibson improperly relied on unreliable hearsay.

Now, Claimant, citing Foster-Glocester Regional School Committee v. Board of Review, 854 A.2d 1008, 1020 (R.I. 2004), concedes that hearsay is admissible in administrative hearings.[8] But, she argues, since insubordination was the allegation, live testimony was necessary, because — "… the Employer was required to show that the Principal had given a direct order, and that Ms. Deletetsky had refused to follow that order."[9] She asserts that an unsigned letter from Ms. DeAngelis to Mr. Vigeant could not accomplish that purpose.[10] However, I do not believe this argument has merit.

First of all, while I must concede that the Town's better course would have been to call Ms. DeAngelis as a witness, I do not agree that it failed to prove its case. The letter in question was a report from one senior school administrator to another — a school principal and its Human Resources

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8 Claimant's Memorandum of Law, at 6-7.

9 Claimant's Memorandum of Law, at 7.

10 Claimant's Memorandum of Law, at 8. This letter may be found in the stapled group of records labeled "D-3."

Director — who had previously spoken about the matter by telephone. And the letter was not unsolicited, Mr. Vigeant had asked for the letter to confirm her statements to him. It was a report she was making of an incident in her professional capacity, made in circumstances she knew would have consequences. As hearsay statements may be stratified, the letter in question would have to be considered highly reliable.

2

The Employer Did Present Evidence of Insubordination on the Part of Ms. Deletetsky

a

There Is Evidence of Insubordination

As stated above, Claimant posits that she could not be deemed insubordinate because she never refused to participate in the IEP meeting. Whatever validity this argument might have in theory, it clearly must fail on the facts of this case because Claimant admitted she made it clear she was not going to participate. We now come to the ultimate questions — what was her justification for refusing to attend the IEP meeting and was that reason sufficient?

b

Claimant Did Not Have Justification to Refuse to Attend in the IEP

Claimant also argues that insubordination cannot be found if the order not complied with was unreasonable.[11]

My analysis of this case began when I read, in her closing argument at the hearing before Referee Gibson, Claimant's Counsel's attribution of Ms. Deletetsky's actions to her desire to be a "conscientious professional." This statement called to my mind a case of some thirty years' vintage — Powell v. Department of Employment Security Board of Review, 477 A.2d 93, 97 (R.I. 1984). Although it has a different provenance — arising under Gen. Laws 1956 § 28-44-17 and not, as here, § 28-44-18 — I believe the Court's ruling in Powell has much to teach us regarding the tension between professional ethics and the desires of an employer.

In Powell, the Rhode Island Supreme Court held a public relations officer had good cause to quit, as defined in Gen. Laws 1956 § 28-44-17, when he was asked by his supervisor to prepare a misleading press release. Powell, 477 A.2d at 97. The Court accepted his assertion, grounded on the testimony of three witnesses with knowledge of the field of media relations,

[11] Claimant's Memorandum of Law, at 10.

that doing so would have undercut his effectiveness in future employment in this field. Powell, 477 A.2d at 97.

In the instant case, Ms. Deletetsky did not allege that Ms. DeAngelis attempted to influence her regarding what she should say at the IEP meeting. She was not asked to give false or misleading opinions. If she had been asked to speak regarding the student's abilities she could have demurred. But, this never happened because she refused to participate.

And Claimant did not provide expert testimony that attending the IEP meeting would have damaged her professional standing. To the extent that she gave any reason for her adamancy, it seems to have been based on fears that she would be pigeon-holed in elementary school teaching. Beyond that, all her explanations of her reluctance to attend the IEP meeting express nothing more than pique, perhaps well-justified, that she had not been given fair notice of the meeting, or that it would have been better if another substitute (who presumably had no more knowledge of the child than she) had been ordered to attend.

In the memorandum she submitted to this Court, Claimant provides an extensive exposition of the law governing IEP meetings. She argues convincingly that it is the better if all participants have personal knowledge of

the child, but she concedes that the law does not require this.[12] In my view, the principal took upon herself full responsibility for selecting the participants at the meeting; accordingly, she would have borne the responsibility if the meeting had failed to resolve the educational issues regarding the student — and had to be rescheduled.

The Board of Review found that the reasons Claimant proffered for her refusal to attend the IEP meeting were insufficient. It therefore adopted the Referee's conclusion, that she committed willful insubordination, as its own. For the reasons I have discussed in this opinion, I cannot state that the Board's decision was clearly erroneous or contrary to law.

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[12] Claimant's Memorandum of Law, at 12. This is perhaps an appropriate place to comment on two associated arguments submitted by Claimant, each of which merits only brief discussion. First, she suggests that her participation in the IRP meeting would have violated the student's right to privacy. Claimant's Memorandum of Law, at 14. I consider this argument to be completely unsound. The meeting was being held for an educational purpose — its efficacy, vel non, does not alter that circumstance. Second, Claimant argues she did not have the competence to participate in the IEP meeting in a meaningful way. Claimant's Memorandum of Law, at 16. Again, the issue of the competence of the participants and the efficacy of the meeting as a whole was a question within the demesne of Principal DeAngelis.

3

Claimant Should Not Have Been Totally Disqualified From Receiving Unemployment Benefits

Finally, Claimant argues that, even if she was terminated for proved misconduct from her substitute teaching position with the West Warwick School Department, she should not been totally disqualified from receiving unemployment benefits, but only partially so.[13] And with this general statement I must agree, for it is based on the precedents of this Court as they have evolved over the course of a number of years. We shall now explain the steps of this process.

First, this evolution began from that provision in the Rhode Island Employment Security Act which provides that a claimant who is laid-off from a full-time position who is working part-time may collect benefits, subject to an offset based on the worker's part-time earnings. See Gen. Laws 1956 § 28-44-7.

Secondly, this Court has held that a worker who is laid-off from a full-time position who then quits a part-time position may also collect benefits, subject to an offset for that income voluntarily forgone. See Craine v. Department of Employment and Training, Board of Review, A.A. No. 91-25,

[13] Claimant's Memorandum of Law, at 16-17.

(Dist.Ct.6/12/91)(DeRobbio, C.J.)(Claimant lost a full-time job, then took leave from part-time job; Held, partial benefits would be awarded pursuant to § 28-44-7). The rule of Craine provides that although the claimant has left his part-time position in circumstances which would have, if viewed in isolation, triggered a disqualification under section 28-44-17 [Leaving Without Good Cause], he is not fully disqualified.

Finally, in Palazzo v. Department of Labor and Training, Board of Review, A.A. No. 10-55 (Dist.Ct. 10/19/2010), this Court extended the holding in Craine to a claimant who, while collecting benefits because of the loss of her job as a medical technician, was then fired from her position at Dunkin Donuts over attendance issues. This Court held in that the wages Ms. Palazzo lost due to her termination for cause would be treated as an offset from her ongoing benefits. From this holding we may infer a broader rule: that one who is eligible for benefits based on the loss of a full-time job will not be totally disqualified if she then separates from a part-time job under disqualifying circumstances. Thus, the Craine rule was extended to include section 18 cases in Palazzo.

Applying this rule to the instant case, I find that Ms. Deletetsky was working part-time for West Warwick. She testified (and this testimony was

uncontradicted) that during her two-week stint at West Warwick she had worked only worked 1½ days the first week and three days the following week.[14] And so, like any other worker, she should not be fully disqualified, but only partially, with an offset for the wages she lost through her termination for misconduct.

Now, a per-diem substitute teacher, unlike some other part-time workers, will generally not have a definite schedule. To the contrary, her schedule is largely unpredictable. So, how can we monetize, under the Craine rule, the wages that were lost through Ms. Deletetsky's misconduct?

Claimant urges that such a computation will be difficult to accomplish and that, as a result, she should be allowed full benefits — we should, in other words, throw up our hands and surrender.[15] And even though the Employer does not speak to this issue in its Memorandum, I do not believe it would be correct to honor this request.

While I concede the onerous nature of the task the Department of Labor and Training will be required to undertake, I do not believe it will be impossible. The Department must compute, from all the available information — including the nature of the assignment she had received from

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[14] Referee Hearing Transcript, at 29.

[15] Claimant's Memorandum of Law, at 17.

Westerly, its expected duration, remuneration and the like — the monies she would have earned in Westerly had she not been fired, and then compute the offset. Such analyses are capably performed by the Department every day.

VI
CONCLUSION

As stated above, pursuant to the applicable standard of review, this Court is not authorized to substitute its judgment for that of the Board of Review. See Gen. Laws 1956 § 42-35-15(g), supra at 8 and Guarino, supra at 8, n. 1. In other words, the role of this Court is not to choose which version of events — the employer's or the claimant's — is more credible; instead, it is merely to determine whether the Board's decision, in light of the evidence of record, is clearly erroneous. And so, for the reasons stated above, I believe the Board of Review's decision is not clearly erroneous in view of the reliable, probative, and substantial evidence of record. Gen. Laws 1956 § 42-35-15(g)(5). Accordingly, I recommend that the decision of the Board of Review be AFFIRMED, except insofar as the Department is ordered to calculate the offset described in Part V-B-3 of this opinion.

/s/
Joseph P. Ippolito
MAGISTRATE
August 12, 2014